

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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ROBERT M. FOX,

Plaintiff,

v.

5:02-CV-1445

COUNTY OF CAYUGA and  
PETER PICKNEY,

Defendants,

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APPEARANCES:

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Cross Defendant Pickney  
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OF COUNSEL:

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KENNETH M. ALWEIS, ESQ.  
SANDRA J. SABOURIN, ESQ.

DAVID H. WALSH, IV, ESQ.

DECISION AND ORDER

This is a civil rights action brought pursuant to 28 U.S.C. § 1983. Plaintiff filed the action on November 15, 2002. The Court referred the action to the Honorable David E. Peebles, United States Magistrate Judge, Northern District of New York, on November 15, 2002 for

general pre-trial supervision and the consideration of dispositive motions.

Each defendant moved pursuant to Rule 37, of the Federal Rules of Civil Procedure, to compel discovery, but, in spite of repeated warnings by the court to plaintiff's counsel regarding her failure to cooperate, and the potential for dismissal of her lawsuit for failure to prosecute, no interaction was forthcoming. Due to this persistent and protracted recalcitrance, the Magistrate Judge recommended that the defendants' motions be granted and plaintiff's action be dismissed with prejudice. He further recommended that defendants be awarded costs and attorney's fees associated with the two motions, to be imposed jointly upon plaintiff and his attorney

Pursuant to 28 U.S.C. § 636(b)(1), plaintiff had ten days to object to Judge Peebles Report and Recommendation. The Report and Recommendation was electronically filed and served upon plaintiff's attorneys on June 22, 2006 and plaintiff was granted until July 6, 2006 to file objections. Although the time to object has expired, no objections were received by the Court or by Judge Peebles.

The failure to file objections to the recommended decision contained in the Report and Recommendation constitutes a waiver of any objection to that recommendation and the court is not required to review unchallenged recommendations. Frank v. Johnson, 968 F.2d 298, 300 (2d Cir.) (citing Thomas v. Arn, 474 U.S. 140, 155 (1985)), *cert. denied*, 506 U.S. 1038, 113 S. Ct. 825, 121 L. Ed.2d 696 (1992); Wesolek v. Canadair Ltd., 838 F.2d 55, 58 (2d Cir.1988). To accept a Report and Recommendation of a magistrate judge to which no timely objection has been made, the court need only be satisfied that there is no clear error on the face of the record. See Fed.R.Civ.P. 72, Notes of Advisory Committee on Rules (citing Campbell v. United States

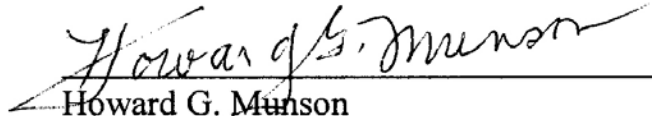
Dist. Court, 501 F.2d 196, 206 (9th Cir.), *cert. denied*, 419 U.S. 879, 95 S. Ct. 143, 42 L. Ed.2d 119 (1974)). In the instant case, the Court has reviewed the Report and Recommendation and concludes that there is no clear error on the face of the record.

Accordingly, for the foregoing reasons, the Report and Recommendation of the Honorable David E. Peebles, United States Magistrate Judge, Northern District of New York, dated June 21, 2006 is adopted in its entirety and this action is dismissed with prejudice .

The court refers this case back to Magistrate Judge Peebles for a determination of attorneys fees and reasonable expenses to be paid to the defendants.

**IT SO ORDERED**

Dated: July 11, 2006  
Syracuse, New York

  
Howard G. Munson  
Senior U.S. District Judge